

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK STATE RESTAURANT
ASSOCIATION,**

Plaintiff,

- against -

**NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York City Department of Health
and Mental Hygiene,**

Defendants.

**USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/14/08**

No. 2008 Civ. 1000

**ORDER TO SHOW CAUSE ON PLAINTIFF'S MOTION FOR
DECLARATORY RELIEF AND A PRELIMINARY INJUNCTION**

Upon reading the Complaint filed in this action, and the declarations of the following:
David B. Allison, executed on January 29, 2008; Kevin Burnett, executed on January 25, 2008;
Debra DeMuth, executed on January 28, 2008; Jimmy Fitzgerald, executed on January 28, 2008;
Julie Haugen, executed on January 25, 2008; Stephen Horn, executed on January 28, 2008;
Kathleen Le Clair, executed on January 28, 2008; Michael Liewen, executed on January 26,
2008; Hector Munoz, executed on January 25, 2008; Eric Olsen, executed on January 29, 2008;
Scott Randolph, executed on January 28, 2008; Valerie Roach, executed on January 29, 2008;
Mason Smoot, executed on January 29, 2008; Kent A. Yalowitz, executed on January 30, 2008;
and all the exhibits attached thereto, together with the accompanying Memorandum of Law,
dated January 30, 2008, and accompanying Appendix, it is hereby:

ORDERED that, good cause having been shown, Defendants New York City Board of Health, New York City Department of Health and Mental Hygiene, and Commissioner Thomas R. Frieden show cause before the Honorable Richard Holwell at Room 17B, United States District Courthouse, 500 Pearl Street, New York, New York 10007, on the 21st day of February, 2008, at 2:30~~am~~ p.m., or as soon thereafter as counsel may be heard, why an order should not be entered granting Plaintiff's motion for (i) a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining and restraining Defendants from enforcing New York City Health Code section 81.50 in violation of the First and Amendment and the Supremacy Clause; and (ii) a declaratory judgment under Rule 57 of the Federal Rules of Civil Procedure that New York City Health Code section 81.50 is preempted under the Supremacy Clause by the Nutritional Labeling and Education Act of 1990, 21 U.S.C. §§ 343, 343-a, and regulations promulgated thereunder by the Food and Drug Administration; and it is

FURTHER ORDERED that service of this Order, together with the Complaint, declarations, exhibits and Memorandum of Law filed in connection therewith, be made upon Defendants c/o the Law Department of the City of New York, 100 Church Street, New York, New York, by overnight courier, such service to be made within twenty-four (24) hours after this Order has been signed, shall constitute good and sufficient service of this motion upon Defendants; and

FURTHER ORDERED that any opposition papers of Defendants and papers of any *amici curiae* shall be filed and served by hand by no later than 5:00 p.m. on the 8th day of February, 2008; and it is

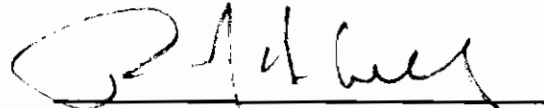
FURTHER ORDERED that Plaintiff's reply papers shall be filed and served by hand by no later than 12:00 p.m. on the 14th day of February, 2008.

Dated: New York, New York

~~January~~ , 2008

February 14

SO ORDERED:

A handwritten signature in black ink, appearing to read "J. A. Jones", written over a horizontal line.

United States District Judge